

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2729**

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**Introduced by Assembly Member Medina**

February 21, 2014

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An act ~~relating to economic development~~ to add Part 5.5 (commencing with Section 14100) to Division 3 of Title 1 of the Corporations Code, to add Chapter 7 (commencing with Section 63090) to Division 1 of Title 6.7 of the Government Code, and to amend Sections 10295 and 10335 of the Public Contracts Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2729, as amended, Medina. ~~California Infrastructure Development Center~~. *California Economic Development Infrastructure Finance Act of 2014.*

*Existing law authorizes various methods to finance public facilities that are necessary to meet the needs of the state. Existing law authorizes the California Infrastructure and Economic Development Bank (I-Bank), located within the Governor's Office of Business and Economic Development, to, among other things, administer the California Small Business Financial Development Corporation Law and to oversee the Small Business Loan Guarantee Program.*

*This bill, the California Economic Development Infrastructure Finance Act of 2014, would create the California Infrastructure Finance Center to administer the provisions of this act, as specified, under the oversight of the I-Bank. This bill would authorize the creation of California infrastructure development corporations, as specified, and establish requirements for those corporations to secure participation rights, as part of forming public-private partnerships with the I-Bank*

*in building infrastructure related to economic-related activities. Participation rights include a commitment by the state to use the California Infrastructure Development Corporation to deliver infrastructure projects. Participation rights also include the right of first refusal by the corporation to participate in public-private partnership projects (P3 projects) and if it should choose to participate, a preestablished minimum participation rate in financing each and all P3 projects. This bill would also provide an exemption from specified public contracting requirements for contracts entered into between the I-Bank and these corporations.*

*This bill would also establish conflict of interest provisions for persons implementing the act or participating in a California Infrastructure Development Corporation. This bill would make a violation of these provisions a felony, thereby creating a crime and a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~The Bergeson-Peace Infrastructure and Economic Development Bank Act establishes the Infrastructure and Economic Development Bank within the Governor's Office of Business and Economic Development, governed by a board of directors composed of 5 members. The act requires, among other things, the bank to establish criteria, priorities, and guidelines for the selection of projects to receive its assistance that includes compliance with the State Environmental Goals and Policy Report, or its successor.~~

~~This bill would state the intent of the Legislature to enact legislation that would establish, within the Infrastructure and Economic Development Bank, a California Infrastructure Development Center as an appropriate means for partnering with private sector infrastructure developers in a thoughtful way that ensures workers, residents, and small businesses are able to participate in the broader economy.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Part 5.5 (commencing with Section 14100) is*  
2     *added to Division 3 of Title 1 of the Corporations Code, to read:*

3  
4             *PART 5.5. PUBLIC-PRIVATE INFRASTRUCTURE*  
5                     *CORPORATIONS*

6  
7                     *CHAPTER 1. PARTICIPATION RIGHTS*

8  
9                             *Article 1. Introduction*

10  
11     14100. (a) *The Legislature finds and declares that engaging*  
12     *the private sector in building infrastructure related to*  
13     *economic-related activities will further the opportunities of*  
14     *California businesses and workers.*

15     (b) *Without a modern infrastructure network comprised of roads,*  
16     *highways, railroads, and air, land, and seaports, California will*  
17     *be unable to remain sufficiently connected to the global economy.*

18     (c) *Finding appropriate means for partnering with private sector*  
19     *infrastructure developers must be undertaken in a thoughtful way*  
20     *that ensures workers, residents, and small businesses are not*  
21     *negatively impacted or result in an unreasonable ability to*  
22     *participate in the broader economy.*

23  
24                             *Article 2. Definitions*

25  
26     14101. *Unless the context otherwise requires, the definitions*  
27     *in this section shall govern the construction of this chapter. The*  
28     *definitions in this chapter shall apply only to this chapter and not*  
29     *to any other chapter of this division.*

30     (a) *“Bank” means the California Infrastructure and Economic*  
31     *Development Bank.*

32     (b) *“Bank board” means the Board of Directors of the*  
33     *California Infrastructure and Economic Development Bank.*

34     (c) *“California Infrastructure Development Center” means the*  
35     *governmental unit within the bank, which is located within the*  
36     *Governor’s Office of Business and Economic Development, with*  
37     *the administrative responsibility for programs and activities*  
38     *authorized pursuant to this part.*

1 (d) “Corporation” means any California infrastructure  
2 development corporation created pursuant to this part.

3 (e) “Directives and requirements” means a document adopted  
4 by the bank board setting forth policy direction as well as rules  
5 governing a particular subject area.

6 (f) “Executive director” means the Executive Director of the  
7 California Infrastructure and Economic Development Bank.

8 (g) “Participation rights” means a commitment by the state to  
9 use the California Infrastructure Development Corporation to  
10 deliver infrastructure projects. Participation rights include the  
11 right of first refusal to participate in each and all public-private  
12 partnership projects (P3 projects) and if it should choose to  
13 participate, a preestablished minimum participation rate in  
14 financing each and all P3 projects.

15 (h) “Program manager” means the manager of the California  
16 Infrastructure Development Center as appointed by the executive  
17 director of the bank.

18  
19 Article 3. Program Manager  
20

21 14103. The program manager shall do all of the following:

22 (a) Administer this chapter.

23 (b) Make recommendations to the executive director and the  
24 bank board on the approval or disapproval of the articles of  
25 incorporation. This determination shall be based upon the  
26 following:

27 (A) Review of the articles of incorporation and bylaws of the  
28 corporation to determine whether they contain the provisions  
29 required by this chapter and conform with the directives and  
30 requirements adopted by the bank board pursuant to this chapter.

31 (B) A determination as to whether the legislative intent  
32 expressed in Section 14100 shall be served by the proposed  
33 corporation.

34 (C) A determination as to whether the responsibility, character,  
35 and general fitness of the individuals who will manage the  
36 corporation command the confidence of the state, and warrant the  
37 belief that the business of the proposed corporation will be honestly  
38 and efficiently conducted in accordance with the intent and purpose  
39 of this chapter.

1     (D) A determination by the program manager that there is  
2     significant need for a new corporation.

3     (c) Examine, or cause to be examined, at any reasonable time,  
4     all books, records, and documents of every kind, and the physical  
5     properties of a corporation. The inspection shall include the right  
6     to make copies, extracts, and search records.

7  
8                     Article 4. Approval of the Corporation  
9

10    14104. The bank board shall approve a new corporation  
11    recommended by the program manager, based on an examination  
12    of each of the following:

13    (a) Review of the articles of incorporation and bylaws of the  
14    corporation to determine whether they contain the provisions  
15    required by this chapter and conform with the directives and  
16    requirements adopted by the bank board pursuant to this chapter.

17    (b) Determination as to whether the legislative intent expressed  
18    in Section 14101 will be served by the proposed corporation.

19    (c) Determination as to whether the responsibility, character,  
20    and general fitness of the individuals who will manage the  
21    corporation command the confidence of the state and warrant the  
22    belief that the business of the proposed corporation will be honestly  
23    and efficiently conducted in accordance with the intent and purpose  
24    of this chapter.

25    (d) Determination of the program manager that there is  
26    significant need for a new corporation.

27  
28                     Article 5. New Corporations  
29

30    14105. Upon approval by the bank board of an entity as a  
31    corporation, an entity shall adopt or amend its articles of  
32    incorporation to comply with the following:

33    (a) The name of the corporation shall include the words “a  
34    California Infrastructure Development Corporation.”

35    (b) The purposes for which the corporation is formed, which  
36    shall be those specified in Section 14101. This requirement shall  
37    not be deemed to preclude a statement of powers.

38    (c) A geographical description of the corporation’s primary  
39    service area. A primary service area may cover certain parts or  
40    the entire state.

1     (d) *The name and addresses of seven or more persons who are*  
2 *to act in the capacity of directors until the selection of their*  
3 *successors.*

4     (e) *That the corporation is organized pursuant to this chapter.*

5     14106. *If the bank board concurs with the findings of the*  
6 *program manager pursuant to Section 14104, the bank board shall*  
7 *direct the program manager to approve the articles of*  
8 *incorporation and endorse the approval thereon and forward the*  
9 *same to the Secretary of State for his or her approval and filing.*  
10 *Likewise, the program manager shall review all amendments to*  
11 *the articles of incorporation to ensure consistency with the*  
12 *purposes of this chapter.*

13     14107. (a) *The corporation's existence as a California*  
14 *Infrastructure Development Corporation begins upon the filing of*  
15 *the articles with the Secretary of State and continues perpetually*  
16 *unless otherwise expressly provided for by law.*

17     (b) *If a corporation is terminated from participation in all*  
18 *programs, in order to continue its existence as a corporation*  
19 *pursuant to Division 1 (commencing with Section 100) of the*  
20 *Corporations Code the corporation shall amend its articles of*  
21 *incorporation in accordance by removing the provisions required*  
22 *by Section 14105, including an amendment to remove the words*  
23 *"California Infrastructure Development Corporation," from the*  
24 *corporate name, and shall no longer be registered with the*  
25 *Secretary of State as a California Infrastructure Development*  
26 *Corporation. A corporation shall not enjoy any of the benefits of*  
27 *a California Infrastructure Development Corporation following*  
28 *termination.*

29     14108. *For six months following the establishment of a*  
30 *corporation, commencing upon filing of the articles of*  
31 *incorporation with the Secretary of State, a corporation shall be*  
32 *on probation. While on probation, a corporation may be suspended*  
33 *if suspension is recommended by the program manager and*  
34 *affirmed by the executive director. This suspension is*  
35 *nonappealable and not subject to the procedures for suspension*  
36 *applicable to a corporation not on probation.*

Article 6. Corporations

14113. The corporate powers of a corporation shall be exercised by its board of directors.

14115. Every corporation shall provide for, and maintain a central staff to perform, all administrative requirements of the corporation, including all those functions required of a corporation by the contract and this chapter.

14120. (a) A corporation shall report to the program manager, or his or her designated representative, all statistical and other reports required by this chapter and Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code.

(b) A corporation shall make a report to the program manager, as required by Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code.

Article 7. Conflict of Interest

14122. It shall be unlawful for a member of the bank board or for the executive director, program manager, or any person who is an officer, director, contractor, or employee of a corporation, or who is a member of a loan committee, or who is an employee of the California Infrastructure and Economic Development Bank to do any of the following:

(a) Ask for, consent, or agree to receive, any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage, for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation, any loan, guarantee, financial, or other assistance from any corporation.

(b) Borrow money, property, or to benefit knowingly, directly or indirectly, from the use of the money, credit, or property of any corporation.

(c) Make, maintain, or attempt to make or maintain, a deposit of the funds of a corporation with any other corporation or association on condition, or with the understanding, expressed or implied, that the corporation or association receiving the deposit shall pay any money or make a loan or advance, directly or indirectly, to any person, partnership, joint venture, association,

1 *or corporation, other than to a corporation formed under this*  
2 *chapter.*

3 *14123. It shall be unlawful for a member of the bank board or*  
4 *for the executive director, program manager, or any person who*  
5 *is an officer or director of a corporation, or who is an employee*  
6 *of the California Infrastructure and Economic Development Bank*  
7 *to purchase or receive, or to be otherwise interested in the*  
8 *purchase or receipt, directly or indirectly, of any asset of a*  
9 *corporation, without paying to the corporation the fair market*  
10 *value of the asset at the time of the transaction.*

11 *14124. Violation of any provision of this article shall constitute*  
12 *a felony.*

13 *SEC. 2. Chapter 7 (commencing with Section 63090) is added*  
14 *to Division 1 of Title 6.7 of the Government Code, to read:*

15  
16 *CHAPTER 7. CALIFORNIA ECONOMIC DEVELOPMENT*  
17 *INFRASTRUCTURE FINANCE ACT OF 2014*  
18

19 *Article 1. Introduction*  
20

21 *63090. (a) This chapter shall be known, and may be cited, as*  
22 *the California Economic Development Infrastructure Act of 2014.*

23 *(b) Notwithstanding any other provision of this division, this*  
24 *chapter shall not apply to any other activities, powers, and duties*  
25 *of the bank under any of the other chapters of this division.*

26 *(c) Infrastructure development, enhancement, and modernization*  
27 *is fundamental to the continued economic growth of the state. In*  
28 *order to be successful in the integrated global economy, California*  
29 *businesses and workers must have access to the necessary*  
30 *infrastructure. Some of this infrastructure will be financed with*  
31 *state moneys, while other infrastructure is more appropriately*  
32 *funded privately.*

33 *(d) It is necessary to authorize the bank to serve as a conduit*  
34 *financier, project advisor, and a project facilitator for*  
35 *infrastructure that supports private economic development*  
36 *activities that provide a meaningful benefit to the people of*  
37 *California.*



Article 2. Definitions

63091. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter. The definitions in this chapter shall apply only to this chapter and not to any other provision of this division.

(a) “Bank” means the California Infrastructure and Economic Development Bank.

(b) “Bank board” means the Board of Directors of the California Infrastructure and Economic Development Bank.

(c) “California Infrastructure Development Center” means the governmental unit within the bank with the administrative responsibility for programs and activities authorized pursuant to Chapter 1 (commencing with Section 14100) of Part 5.5 of Division 3 of Title 1 of the Corporations Code, and this chapter.

(d) “Corporation” means any California Infrastructure Development Corporation created pursuant to Chapter 1 (commencing with Section 14100) of Part 5.5 of Division 3 of Title 1 of the Corporations Code.

(e) “Directives and requirements” means a document adopted by the bank board setting forth policy direction as well as rules governing a particular subject area.

(f) “Executive director” means the Executive Director of the California Infrastructure and Economic Development Bank.

(g) “Participation rights” means a commitment by the state to use a corporation to deliver infrastructure projects. Participation rights include the right of first refusal to participate in a public/private partnership project or projects (P3 projects) and if it should choose to participate, a preestablished minimum participation rate in financing the P3 project or projects.

(h) “Program manager” means the manager of the California Infrastructure Development Center as appointed by the executive director of the bank.

Article 3. Purpose

63092. The bank shall include the California Infrastructure Finance Center that administers the California Economic Development Infrastructure Act.

Article 4. Administrative Structure

63093. (a) (1) The board shall designate one or more private entities which meet the requirements of Article 4 (commencing with Section 14104) of Chapter 1 of Part 5.5 of Division 3 of Title 1 of the Corporations Code as a California Infrastructure Development Corporation.

(2) Upon the approval of the board, the bank may award the participation rights to a California Infrastructure Development Corporation, which meets the criteria in directives and requirements established pursuant to subdivision (f).

(b) (1) A corporation designated by the board may deliver infrastructure projects that have been determined by statute as appropriate for financing through a public-private partnership.

(2) The contract shall state the rights and conditions of the agreement. At a minimum, the agreement shall include the right of first refusal to participate in each and all P3 projects the state undertakes during the term of the contract. The agreement may include, for projects the corporation agrees to participate, a preestablished minimum participation rate (PR) in financing each and all P3 projects.

(3) No agreement shall be for longer than five years.

(4) The bank may cancel a contract for fraudulent activity and poor performance as set forth in the directives and requirements adopted pursuant to subdivision (f).

(c) The award of the participation rights shall be reflected as an equity investment by the state in either an individual project or the California Infrastructure Cooperative.

(d) The bank may employ consultants and advisers as may be necessary in its judgment, in connection with the award of the participation rights. Payment for these services shall be reimbursed from fees received from an applicant for designation under this section.

(e) Section 10295 of, and Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of, the Public Contract Code do not apply to agreements entered into by the bank in connection with the award of participation rights under this chapter.

(f) The bank board shall adopt directives and requirements concerning the implementation of this chapter and pursuant to

1 *Chapter 1 (commencing with Section 14100) of Part 5.5 of Division*  
2 *3 of Title 1 of the Corporations Code. These directives and*  
3 *requirements shall include, a process for receiving and reviewing*  
4 *applications and entering into participation a rights agreements*  
5 *which meet the requirements of this section.*

6 *(g) The bank shall annually report on its activities related to*  
7 *the duties and authorities in this section as part of the bank's*  
8 *annual report, as required in Section 63035.*

9 *63094. The program manager acting under the guidance of*  
10 *the executive director shall do all of the following:*

11 *(a) Administer this chapter.*

12 *(b) Require each corporation to submit an annual written plan*  
13 *of operation.*

14 *(c) Enter into a participation rights agreements between the*  
15 *bank and a corporation for services to be provided by the*  
16 *corporation to state under this chapter and Chapter 1 (commencing*  
17 *with Section 14100) of Part 5.5 of Division 3 of Title 1 of the*  
18 *Corporations Code.*

19 *(d) Act as liaison between corporations, other state and federal*  
20 *agencies, lenders, and the Legislature.*

21 *SEC. 3. Section 10295 of the Public Contract Code is amended*  
22 *to read:*

23 *10295. (a) All contracts entered into by any state agency for*  
24 *(1) the acquisition of goods or elementary school textbooks, (2)*  
25 *services, whether or not the services involve the furnishing or use*  
26 *of goods or are performed by an independent contractor, (3) the*  
27 *construction, alteration, improvement, repair, or maintenance of*  
28 *property, real or personal, or (4) the performance of work or*  
29 *services by the state agency for or in cooperation with any person,*  
30 *or public body, are void unless and until approved by the*  
31 *department. Every contract shall be transmitted with all papers,*  
32 *estimates, and recommendations concerning it to the department*  
33 *and, if approved by the department, shall be effective from the*  
34 *date of the approval.*

35 *(b) This section applies to any state agency that by general or*  
36 *specific statute is expressly or impliedly authorized to enter into*  
37 *transactions referred to in this section.*

38 *(c) This section does not apply to the following:*

39 *(1) Any transaction entered into by the Trustees of the California*  
40 *State University, by the Board of Governors of the California*

1 Community Colleges, or by a department under the State Contract  
2 Act or the California State University Contract Law.

3 (2) Any contract of a type specifically mentioned and authorized  
4 to be entered into by the Department of Transportation under  
5 Section 14035 or 14035.5 of the Government Code, Sections 99316  
6 to 99319, inclusive, of the Public Utilities Code, or the Streets and  
7 Highways Code.

8 (3) Any contract entered into by the Department of  
9 Transportation that is not funded by money derived by state tax  
10 sources but, rather, is funded by money derived from federal or  
11 local tax sources.

12 (4) Any contract entered into by the Department of Human  
13 Resources for state employee benefits, occupational health and  
14 safety, training services, or combination thereof.

15 (5) Any contract let by the Legislature.

16 (6) Any contract entered into under the authority of Chapter 4  
17 (commencing with Section 11770) of Part 3 of Division 2 of the  
18 Insurance Code.

19 (7) *Any contract entered into under the authority of Chapter 7*  
20 *(commencing with Section 63090) of Division 1 of Title 6.7 of the*  
21 *Government Code.*

22 *SEC. 4. Section 10335 of the Public Contract Code is amended*  
23 *to read:*

24 10335. (a) This article shall apply to all contracts, including  
25 amendments, entered into by any state agency for services to be  
26 rendered to the state, whether or not the services involve the  
27 furnishing or use of equipment, materials, or supplies or are  
28 performed by an independent contractor. Except as provided in  
29 Sections 10295.6 and 10351, and paragraphs (8) and (9) of  
30 subdivision (b) of Section 10340, all contracts subject to this article  
31 are of no effect unless and until approved by the department. Each  
32 contract shall be transmitted with all papers, estimates, and  
33 recommendations concerning it to the department and, if approved  
34 by the department, shall be effective from the date of approval.  
35 This article shall apply to any state agency that by general or  
36 specific statute is expressly or impliedly authorized to enter into  
37 the transactions referred to in this section. This article shall not  
38 apply to contracts for the construction, alteration, improvement,  
39 repair, or maintenance of real or personal property, contracts for  
40 services subject to Chapter 10 (commencing with Section 4525)

1 of Division 5 of Title 1 of the Government Code, to contracts that  
2 are listed as exceptions in Section 10295, contracts of less than  
3 five thousand dollars (\$5,000) in amount, contracts of less than  
4 five thousand dollars (\$5,000) where only per diem or travel  
5 expenses, or a combination thereof, are to be paid, contracts  
6 between state agencies, or contracts between a state agency and  
7 local agency or federal agency.

8 (b) In exercising its authority under this article with respect to  
9 contracts for the services of legal counsel, other than the Attorney  
10 General, entered into by any state agency that is subject to Section  
11 11042 or Section 11043 of the Government Code, the department,  
12 as a condition of approval of the contract, shall require the state  
13 agency to demonstrate that the consent of the Attorney General to  
14 the employment of the other counsel has been granted pursuant to  
15 Section 11040 of the Government Code. This consent shall not be  
16 construed in a manner that would authorize the Attorney General  
17 to establish a separate program for reviewing and approving  
18 contracts in the place of, or in addition to, the program administered  
19 by the department pursuant to this article.

20 (c) Until January 1, 2001, the department shall maintain a list  
21 of contracts approved pursuant to subdivision (b). This list shall  
22 be filed quarterly with the Senate Committee on Budget and Fiscal  
23 Review and the Assembly Committee on Budget. The list shall be  
24 limited to contracts with a consideration in excess of twenty  
25 thousand dollars (\$20,000) during the life of the contract and shall  
26 include sufficient information to identify the provider of legal  
27 services, the length of each contract, applicable hourly rates, and  
28 the need for the services. The department shall add a contract that  
29 meets these conditions to the list within 10 days after approval. A  
30 copy of the list shall be made available to any requester. The  
31 department may charge a fee to cover the cost of supplying the list  
32 as provided in Section 6253 of the Government Code.

33 (d) Contracts subject to the approval of the department shall  
34 also have the department's approval for a modification or  
35 amendment thereto, with the following exceptions:

36 (1) An amendment to a contract that only extends the original  
37 time for completion of performance for a period of one year or  
38 less is exempt. If the original contract was subject to approval by  
39 the department, one fully executed copy including transmittal  
40 document, explaining the reason for the extension, shall be sent

1 to the legal office of the department. A contract may only be  
2 amended once under this exemption.

3 (2) Contracts let or awarded on the basis of a law requiring  
4 competitive bidding may be modified or amended only if the  
5 contract so provides or if authorized by the law requiring  
6 competitive bidding.

7 (3) If an amendment to a contract has the effect of giving the  
8 contract as amended an increase in monetary amount, or an  
9 agreement by the state to indemnify or save harmless any person,  
10 the amendment shall be approved by the department.

11 (4) *Notwithstanding subdivision (a), this article shall not apply*  
12 *to a contract entered into pursuant under the authority of Chapter*  
13 *7 (commencing with Section 63090) of Division 1 of Title 6.7 of*  
14 *the Government Code.*

15 *SEC. 5. No reimbursement is required by this act pursuant to*  
16 *Section 6 of Article XIII B of the California Constitution because*  
17 *the only costs that may be incurred by a local agency or school*  
18 *district will be incurred because this act creates a new crime or*  
19 *infraction, eliminates a crime or infraction, or changes the penalty*  
20 *for a crime or infraction, within the meaning of Section 17556 of*  
21 *the Government Code, or changes the definition of a crime within*  
22 *the meaning of Section 6 of Article XIII B of the California*  
23 *Constitution.*

24 ~~SECTION 1. It is the intent of the Legislature to enact~~  
25 ~~legislation to establish, within the Infrastructure and Economic~~  
26 ~~Development Bank, a California Infrastructure Development Center~~  
27 ~~as an appropriate means for partnering with private sector~~  
28 ~~infrastructure developers in a thoughtful way that ensures workers,~~  
29 ~~residents, and small businesses are able to participate in the broader~~  
30 ~~economy.~~